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SERVICE DATE - NOVEMBER 21, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-330 (Sub-No. 3X)

OTTER TAIL VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION— IN WILKIN AND OTTER TAIL COUNTIES, MN

Decided: November 19, 2001

By petition filed on August 3, 2001,¹ Otter Tail Valley Railroad Company (OTVR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 2.65-mile line of railroad known as the Foxhome Branch, extending between milepost 58.8 near French, MN, and milepost 61.45, near Foxhome, MN (the end of the line), in Wilkin and Otter Tail Counties, MN. We will grant the exemption, subject to two environmental conditions and standard employee protective conditions.

BACKGROUND

The portion of line proposed for abandonment is part of a 176-mile line that OTVR acquired from the Burlington Northern Railroad Company in 1986. According to OTVR, it operated over the Foxhome Branch until May 1, 2000, when OTVR was forced to embargo the line because of the unsafe condition of a bridge located at milepost 59.4. OTVR states that, prior to the embargo, it had one shipper on the line, Foxhome Elevator Company (Foxhome Elevator), a receiver of urea and potash. Foxhome Elevator was located at Foxhome. OTVR says that Foxhome Elevator received 29 carloads of traffic in 1997, generating \$7,685 in gross revenue; 30 carloads in 1998, generating \$8,060 in gross revenue; and 31 carloads in 1999, generating \$8,339 in gross revenue. OTVR states that there has been no traffic on the line for more than 14 months, and that, even prior to the embargo, the shipper used the line for only about 50% of its transportation needs.

According to OTVR, the embargo continues today, not only because of the condition of the bridge, but because the line consists of 66-pound rail, much of which is broken. OTVR asserts that substantial rehabilitation costs (about \$749,628) would be required to bring the line up to Federal Railroad Administration (FRA) class 1 condition. OTVR adds that the bridge

¹ Notice of the filing was served and published in the Federal Register on August 23, 2001 (66 FR 44436).

would require \$50,000 in repairs and that at least 50 broken rails would require replacement at a cost of \$30,515 even before operations could resume.²

OTVR says that, on the basis of discussions with Foxhome Elevator, it projects handling 35 carloads annually, earning under \$10,000 in annual gross revenues. Petitioner calculates that it would cost between \$23,275 and \$43,050 to operate over the line to handle those 35 carloads. OTVR says that it would cost about \$9,000 annually to maintain the line, if petitioner spent almost \$750,000 to rehabilitate the line to FRA class 1 standards. OTVR asserts that the abandonment is justified by the combination of the high cost of rehabilitation, maintenance-of-way, and operations weighed against the light usage of rail service by the sole shipper, which has used and currently uses alternative motor carrier transportation.³

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving OTVR of the costs of owning, maintaining, and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. There is no overhead traffic on the line. Moreover, the sole shipper on the line also used motor carrier service while the line was active and has not objected to the proposed abandonment. Nevertheless, to ensure that the shipper is informed of our action, we will require OTVR to serve a copy of this decision on Foxhome Elevator within 5 days of the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

² OTVR states that repairing the bridge and replacing the broken rail would be a short-term solution. It maintains that the prudent course to minimize maintenance costs and operating costs would be to rehabilitate the line and replace all of the 66-pound rail.

³ Petitioner notes that Minnesota Highway 210 runs parallel to the entire line proposed for abandonment, and that the shipper is located only 9 miles from the interchange of Minnesota Highway 210 and Interstate Highway 94, near Fergus Falls, MN.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

OTVR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an environmental assessment (EA) on October 2, 2001. In the EA, SEA noted that the Minnesota State Historic Preservation Officer (MSHP) has advised that the line may be eligible for listing on the National Register of Historic Places, and that the bridge on the line may be a contributing element. Therefore, SEA recommended that a condition be imposed requiring OTVR to consult with MSHP because of outstanding historic resources concerns, and that it retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

SEA also noted that the National Geodetic Survey (NGS) has identified three geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommended that a condition be imposed requiring OTVR to notify NGS at least 90 days prior to any salvage activities that may disturb or destroy these markers so that plans can be made for their relocation.

No comments to the EA were filed by the November 1, 2001 due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that, following abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note, however, that no one has sought a public use condition, and none will be imposed.⁴

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the abandonment of the above-described line from the prior approval requirements of 49 U.S.C. 10903, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979),

⁴ Public use requests were due by September 12, 2001, 20 days after publication of notice of the petition in the Federal Register.

and the conditions that OTVR shall: (1) consult with MSHP because of outstanding historic resources concerns, and retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (2) notify NGS at least 90 days prior to any salvage activities that may disturb or destroy the identified geodetic station markers so that plans can be made for their relocation.

2. OTVR is directed to serve a copy of this decision on Foxhome Elevator within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by OTVR and the Board by November 30, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective December 21, 2001. Petitions to stay must be filed by December 6, 2001, and petitions to reopen must be filed by December 17, 2001.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), OTVR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by OTVR's filing of a notice of consummation by November 21, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary